

TITLE OF REPORT: COMPLAINTS HANDLING PROCEDURE AND DETAILED GUIDE ON THE NHDC CODE OF CONDUCT

REPORT OF THE DEPUTY MONITORING OFFICER

1. SUMMARY

- 1.1 The report covers potential changes to the Complaints handling arrangements and a new Guide to the NHDC Code of Conduct.

2. RECOMMENDATIONS

That the Standards Committee approve:

- 2.1 the amended Complaints Handling Procedure (Appendix A – *with tracked changes*) to be applied to new complaints received following approval;

[Note a “clean” version with amendments accepted is at Appendix B]; and

- 2.2 the NHDC Code of Conduct Guide (Appendix C).

If Members require more than superficial amendments to the above documents, the alternative recommendation is that any minor amendments should be delegated to the Monitoring Officer to undertake in consultation with the Independent Person.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure good governance within the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 No consultation has been undertaken externally, although the draft changes to the Complaints Handling Procedure and draft Guide were forwarded to the Independent Person and Deputy Independent Person for consideration and comment/ amendment prior to the drafts being finalised.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The Council's complaints handling arrangements were initially approved by Full Council following the changes in the Localism Act 2011, in 2012. These were updated (with minor amendments) most recently under delegated authority following the February 2015 Standards Committee meeting. The proposed changes to the Complaints Handling Procedure are to reflect a more effective system. The new Guide is aimed at assisting Members with interpreting the Code and is to be taken into account by officers and Members when assessing complaints. This should assist with consistency of approach and understanding. It is not meant, however, as an exhaustive list to cover every eventuality, or as a substitute for advice from the Monitoring Officer or his staff, which will still be available as required.

8. ISSUES

Complaint handling procedure:

- 8.1. Members will be aware that only one complaint has been dealt with by the Standards Sub-Committee since the introduction of the current standards regime in 2012.
- 8.2. Members will also be aware that it has always been intended that the complaints handling procedure would be reviewed after it had been "fully" used, in order to ensure it works as anticipated. Such an intention was last reported to the Committee in March 2016 with the stated aim of bringing the amended procedure back to the next Committee (namely this one). Following that meeting the Chairman of the Standards Committee, the Independent Person, the Deputy Independent Person, the Monitoring Officer and the Deputy Monitoring Officer met to review the procedures. The review included lessons learned from dealing with various complaints for both NHDC and East Herts District Council, from initial assessment, through investigation and full hearing. The changes proposed incorporate the issues discussed.
- 8.3. The proposed changes in summary include:
- a. Further details on how the complaint will initially be handled.
 - b. Highlighting the need for a Member, who is subject to a complaint to co-operate with the assessment and any investigation/ preparation for a hearing.
 - c. What would happen if a Member resigns or is not re-elected during the process, followed by later co-option/ or re-election.
 - d. Further details on how an investigation will be handled and considered.
 - e. Introduction of a 'case-management hearing (CMH)' to deal with administrative issues (such as final witness evidence, submissions and fixing a final hearing date) and narrow matters in dispute.
 - f. A more comprehensive process for any final hearing.
 - g. Removal of the Appeals process.
 - h. Change of wording/ format from complainant – "You" process to one that more general complainant/ Member Procedure.
- 8.4. The proposed changes are aimed at ensuring that the final hearing is able to focus on the relevant issues and to reduce the potential for delays. It should make the process more certain for the complainants and those subject to the complaint.
- 8.5. In terms of the appeal process, Members may recall that this was not included in the original proposals that were recommended for approval in 2012. The appeal stage was introduced by Members as an amendment at Council, although this does not correspond

to the recommended best practice approach for standards complaints. There is no requirement to put in place an appeals mechanism against any such decisions on findings of a breach. Any decision on sanctions (bearing in mind these are extremely limited) would potentially be open to Judicial Review if it was patently unreasonable or if it was taken improperly or sought to impose a sanction which the Authority had no power to impose. A complaint could also possibly be made to the Local Government Ombudsman to consider if there was administrative fault leading to injustice in the way the Council's decision was reached.

- 8.6. It is worth noting that under the "old" standards regime there was an internal review mechanism for the initial assessment of a complaint only (not the final hearing). That was criticised for duplication and inefficiency. Having an appeal mechanism elongates the process for all concerned. It replicates an internal process and its removal still allows a potential challenge or complaint with merit to be pursued as outlined in 8.5 above.
- 8.7. Given the limited sanctions it is therefore recommended that the appeal process is removed, allowing any challenge to be externalised, as it is with any other regulatory function (such as planning or licensing).
- 8.8. By way of transitional arrangements it is proposed that any ongoing complaints are assessed and investigated according to the old procedure, with the new procedure being used for complaints received after its approval.

NHDC Code of Conduct Guidance:

- 8.9. As there is no mandatory Code of Conduct in England, there is no government guidance on what would constitute breaches of the code, what would for example, amount to disrespect or bullying (in the context of Member complaints) or when the Code of Conduct is engaged in England. NHDC adopted its own robust Code, most recently in 2013 and it is the duty of Councillors to abide by this. As part of the review of arrangements it was considered beneficial if there was a detailed Guide that could assist Members and officers to interpret provisions, and therefore help Members to follow the Code.
- 8.10. This will be a "dip in, dip out" Guide available on the website, updated annually. It will be used by officers when assessing or investigating complaints and by the Standards Sub-Committee when determining a complaint at final hearing.
- 8.11. The Guide (as indicated in Appendix B) takes into account the Department for Communities and Local Government's "*Openness and transparency on personal interests A guide for councillors*"¹ ("DCLG guidance"). It also refers to guidance provided by the Public Services Ombudsman (for Wales) in respect of Code of Conduct Complaints² – where the NHDC Code *has similar provisions* to that of the mandatory Welsh Code, as well as cases law or decisions, or the previous Standards Board Guidance *where these are or would still be relevant*.
- 8.12. It is the intention to use this as part of Member training, due to be arranged in November. Standards Committee consideration and approval would provide valuable endorsement and weight.

¹ <https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors> 2013.

² The Code of Conduct for members of local authorities in Wales Guidance from the Public Services Ombudsman for Wales for members of county and county borough councils, fire and rescue authorities, and national park authorities reissued March 2015.

9. LEGAL IMPLICATIONS

- 9.1 The terms of reference of the Standards Committee include at paragraphs 7.5.1 “*to promote and maintain high standards of conduct by Members and Co- Opted Members of the authority*”. 7.5.8 “*to assist Councillors and Co-Opted Members to observe the Members’ Code of Conduct*”; and 7.5.11 “*to review and approve the Council’s arrangements for dealing with complaints about Member conduct.*” The content of the report and actions therefore fall within the remit of the Standards Committee.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report.

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.3 Otherwise there are no direct equality implications to this report, other than the general aim that effective complaint handling arrangements and guidance will promote equality of treatment.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of ‘social value’ as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 No specific implication. Member training will be arranged (intended for November), where the Guide will be considered and hopefully assist Members to understand issues such as respect / bullying and harassment with regards to employees in the workplace.

15. APPENDICES

- 15.1 Appendix A – Complaints Handling Procedure for matters relating to the Councillors’ Code of Conduct with proposed amendments as tracked changes.
- 15.2 Appendix B – “clean” version of Appendix A with amendments already accepted.
- 15.3 Appendix C - The NHDC Code of Conduct detailed Guide: - what the Code means for members, draft.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Those listed in the draft Guide.